

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA

In re

Case No. 03-30940-DHW
Chapter 13

JAMES E. JONES, JR.,

Debtor.

ORDER GRANTING
MOTION TO INCUR DEBT

The debtor filed a motion on January 9, 2006 to incur a debt to purchase a vehicle.

The motion came on for hearing on February 6, 2006.

The debtor wants to incur a debt of \$13,595 to purchase a 2003 Chrysler PT Cruiser. If approved, the monthly payment would be \$450.

The debtor is married. The debtor had 2 cars when this case was filed on March 24, 2003 — a 1989 Jeep Cherokee Laredo and a 1991 Oldsmobile Silhouette, both with at least 180,000 miles. The vehicles were unencumbered by liens. One of the vehicles is now inoperable. The debtor proposes to replace that vehicle with the Chrysler. The debtor's wife is not employed. They have one minor child.

The court confirmed the debtor's plan on May 22, 2003. The plan provides for a payment over time of \$1,836 on allowed unsecured claims. The trustee estimates that this amount will pay unsecured creditors an approximate 11% dividend.

The trustee did not object to confirmation. Therefore, the plan

satisfied the “disposable income” test.³ See 11 U.S.C. § 1325(b)(1)(B).

There is no evidence that the debtor has had a post confirmation increase in income, decrease in expenses, or combination of the two that resulted in additional income. However, this plan is very close to being 3 years old. Therefore, the debtor shortly will have applied his disposable income for three years to making payments under the plan. See 11 U.S.C. § 1325.

In addition, it appears that this debt is necessary to the debtor’s performance under the plan. See 11 U.S.C. § 1305(a)(2). Accordingly, it is

ORDERED that the motion is GRANTED. This order does not constitute a modification of the chapter 13 plan, and all provisions of the plan remain in full force and effect.

Done this 14th day of February, 2006.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: Debtor
Gary A. Backus, Attorney for Debtor
Curtis C. Reding, Trustee

³ The policy of the standing chapter 13 trustee in this district is to object to confirmation of any plan that pays less than 100% of allowed unsecured claims if the “disposable income” test is not met.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA

In re

Case No. 04-31919-DHW

Chapter 13

SHEFFIELD WALKER, JR.
PEGGY G. WALKER,

Debtor.

ORDER DENYING
MOTION TO INCUR DEBT

The debtors filed a motion on January 19, 2006 to incur a debt to purchase a vehicle. The trustee filed an objection to the motion.

The motion came on for hearing on February 6, 2006.

The debtors want to incur a debt of \$7,975 to purchase a 2000 Ford Taurus. If approved, the monthly payment would be about \$380.

The debtors had 2 cars when this case was filed on July 13, 2004 – a 1989 Volvo 760 Turbo and a 2002 Chevrolet Blazer. The debtors proposed to pay for both vehicles through the plan. The creditor with a security interest in the Volvo did not file a claim in this case. The Volvo is now inoperable. The debtors propose to replace the Volvo with the Ford Taurus. Only one of the debtors is employed. They have no children.

The court confirmed the debtor's plan on September 24, 2004. The plan provides for 0% payment on allowed unsecured claims. The trustee did not object to confirmation. Therefore, the plan satisfied the "disposable income" test.² See 11 U.S.C. § 1325(b)(1)(B).

² The policy of the standing chapter 13 trustee in this district is to object to confirmation of any plan that pays less than 100% of allowed

The trustee objects to the motion questioning why a second vehicle is necessary. The trustee further contends if the debtors have additional disposable income, that income should be devoted to pay unsecured creditors which are currently receiving nothing.

The court agrees. However, there is no evidence that the debtor has had a post confirmation increase in income, decrease in expenses, or combination of the two that resulted in additional income.

Therefore, the debt would necessarily interfere with her ability to perform under the plan. The court notes that the debtors have already amended the plan to cure a postpetition default in mortgage payments. This amendment required an increase in the debtor's plan payments.

The debt is not necessary to the debtor's performance under the plan. See 11 U.S.C. § 1305(a)(2). For the above reasons, it is

ORDERED that the motion is DENIED.

Done this 14th day of February, 2006.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: Debtor

Gary A. Backus, Attorney for Debtor
Curtis C. Reding, Trustee

unsecured claims if the "disposable income" test is not met.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA

In re

Case No. 05-30271-DHW
Chapter 13

STEPHANIE R. LAMBERT,

Debtor.

ORDER DENYING DEBTOR'S
MOTION TO INCUR DEBT

The debtor filed a motion on January 9, 2006 to incur a debt to purchase a home.

The motion came on for hearing on February 6, 2006.

The debtor wants to incur a debt of about \$74,221 to purchase a home. If approved, the monthly mortgage payments would be about \$600. Currently, the debtor's rent is \$450 per month.

The court confirmed the debtor's plan less than one year ago on March 31, 2005. The plan provides for 40% payment on allowed unsecured claims. The trustee did not object to confirmation. Therefore, the plan satisfied the "disposable income" test.¹ See 11 U.S.C. § 1325(b)(1)(B).

There is no evidence that the debtor has had a post confirmation increase in income, decrease in expenses, or combination of the two that resulted in additional income. There was an allegation at the hearing that the debtor has a different job that would enable her to pay the mortgage

¹ The policy of the standing chapter 13 trustee in this district is to object to confirmation of any plan that pays less than 100% of allowed unsecured claims if the "disposable income" test is not met.

payment. However, there is no evidence of record, whether amended schedules or otherwise, reflecting an increase in the debtor's postpetition income.

The debtor has just recently moved to amend the plan to add a priority creditor and lengthen the term of the plan. The trustee's recommendation reflects that the motion renders the plan infeasible.

The debt would necessarily interfere with her ability to perform under the plan. The debt is not necessary to the debtor's performance under the plan. See 11 U.S.C. § 1305(a)(2). Accordingly, it is

ORDERED that the motion is DENIED.

Done this 14th day of February, 2006.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: Debtor

Richard D. Shinbaum, Attorney for Debtor
Curtis C. Reding, Trustee